IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23868 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARESHKMAR DEVCHANDBHAI KOLI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,
MR ND GOHIL AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 16/06/2006

ORAL JUDGMENT

1. This petition is filed by brother in-law of the detenu namely Rajeshkumar Lalbhai Patel, by which

the petitioner has challenged the detention order of the detenu dated 6-10-2005, by which the detenu is detained as a “bootlegger” under Section 3 (1) read with Section 2 (b) of Prevention of Anti Social Activities Act (“PASA” for short). Along with the order of detention, the detenu is also served with the grounds of detention. In the grounds of detention, there is a reference to one criminal case registered against the detenu. The aforesaid criminal case is registered against the detenu in connection with dealing in foreign liquor.

2. The detaining authority after arriving at a subjective satisfaction has passed the aforesaid order of detention against the detenu. According to the detaining authority, the detenu has violated the law and order and public order. It is also stated in the detention order that the activities of the detenu are prejudicial to the public health. It is also stated by the detaining authority that the detenu is in judicial custody and he is likely to be released on bail if the detenu prefers bail application before the competent court.

3. Mr. H.R.Prajapati, learned advocate for the petitioner has vehemently submitted that except

the solitary offence registered against the detenu there is no other credible material on record by which it can be said that the detenu has violated public order and his activities are detrimental to public health. He has further submitted that even no statement of any independent witness udner Section 9 (2) of the act is recorded and the sole basis of passing the order of detention is the solitary offence registered against the detenu. He has further submitted that it is not mentioned in the grounds of detention that on what basis the detaining authority has come to the conclusion that the detenu is likely to be released on bail by the competent court if the detenu prefers bail application before the competent court.

4. Mr. Prajapati has further submitted that it cannot be said that the detenu is a bootlegger simply because one criminal case is registered against him under the Bombay Prohibition Act and it can at the most be said that the act of the detenu is in violation of law and order but it cannot be said that the detenu has violated public order or that his activities are detrimental to public health. He has further submitted that simply because the detenu was alleged to have possessed foreign

liquor, it cannot be said that his activity is prejudicial to public health. He has further submitted that it cannot be said that consumption of foreign liquor affects the public health unless there is some credible material on record in this behalf. It is submitted by him that the authority has not applied its mind properly and came to the conclusion that the activities of the detenu are detrimental to public health, even when there is no credible material available on record in this behalf.

5. Mr. Prajapati has further argued that at the relevant time the detenu was already in judicial custody yet he has been detained under the provisions of PASA. This factual aspect as such is not in dispute. Learned advocate Mr. Prajapati has placed reliance on a decision rendered by the Apex Court in the case of **T.V.SRAVANAN ALIAS A.R.PRASANA vs. STATE THROUGH SECRETARY AND ANOTHER,** reported in **(2006) 2 Supreme Court Cases 664**, more particularly para 14 wherein the Apex Court has held as under :

> "We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the

appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The “imminent possibility” of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13-12-2005.”

6. Learned advocate for the petitioner has also relied upon the decision of the Division Bench of this Court rendered in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana V. State of Gujarat. In paragraph 5 of the said judgement, Division Bench of this Court has held as under :

"If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible

material has to be there. In the case of K.S. Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence

does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the mater keeping in view the observations made by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by

the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants."

7. Considering the aforesaid aspect of the matter and considering the fact that there is no credible material available on record to show that the activities of the detenu are prejudicial to public health, at the most it can be said that the detenu is guilty of violating law and order but it cannot be said that the activities of the detenu are prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

8. In view of what is stated hereinabove, the petition is allowed. The order of detention passed against the detenu dated 6-10-2005 is quashed and set aside. The detenu Nareshkumar Devchandbhai Koli Patel is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR,J.)

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